

HOUSE BILL REPORT

ESSB 6103

As Reported by House Committee On:

Health Care & Wellness
Health & Human Services Appropriations & Oversight

Title: An act relating to the practice of reflexology and massage therapy.

Brief Description: Concerning the practice of reflexology and massage therapy.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser and Fraser).

Brief History:

Committee Activity:

Health Care & Wellness: 2/15/12, 2/20/12 [DPA];

Health & Human Services Appropriations & Oversight: 2/22/12 [DPA(HCW)].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Beginning July 1, 2013, requires persons practicing reflexology to be certified by the Department of Health (unless the person is licensed as a massage practitioner).
- Provides for Department of Health inspections of massage and reflexology businesses during business hours for the purposes of ascertaining violations of the licensure and certification programs.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 11 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

Staff: Chris Cordes (786-7103).

Background:

Massage Practitioners' Licensure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Massage practitioners are licensed by the Department of Health (DOH). Massage therapy is defined as a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes, but does not include diagnosis or attempts to adjust or manipulate articulations of the body or spine.

A person may not practice or represent himself or herself as a massage practitioner without being licensed to practice. A person represents himself or herself as a massage practitioner when using various specified terms in a title or description of services, including the term "reflexologist." However, a person who limits his or her practice to reflexology is exempt from the requirement to be licensed as a massage practitioner, and the person's reflexology services are not designated or implied to be massage or massage therapy. There is not a separate credential for reflexologists.

Inspections of Massage Practitioners' Businesses.

Under the massage practitioners' licensure statute, state and local law enforcement personnel are authorized to inspect the premises at any time, including business hours. However, in 1976, the Washington Supreme Court (Court) enjoined the enforcement of this and a related statute giving the regulating state agency authority to inspect these businesses. The Court found that the two statutes failed to delineate adequate limitations on purpose, time, place, or scope of the inspection. The statute authorizing state agency inspections was repealed in 1987.

Sunrise Review of Reflexology.

In 1999 the DOH conducted a sunrise review of a bill that would have certified reflexologists. At that time, the DOH recommended not making changes to the regulatory structure involving reflexology or massage. Among its findings, the DOH noted that the provision of reflexology services by massage therapists did not appear to pose a significant risk to the public and that no information was presented to justify retaining reflexology as a modality that could only be practiced by licensed massage therapists. The DOH also noted that the demand for reflexology services appeared to be increasing and that the harm to the public from not being able to access the services was a potential harm.

Summary of Amended Bill:

Certification as a Reflexologist.

Reflexology practice is regulated within the statute licensing massage practitioners. A person practicing reflexology or representing himself or herself as a reflexologist is required either to be certified as a reflexologist or licensed as a massage practitioner by the DOH.

"Reflexology" is defined as a health care service that is limited to applying alternating pressure with fingers to the lower one-third of the extremities, feet, hands, and outer ears

based on reflex maps. It does not include the diagnosis of or treatment for specific diseases or joint manipulations.

To be certified as a reflexologist, an applicant must be at least 18 years of age and have successfully completed a course of study in reflexology approved by the DOH and passed an examination administered or approved by the DOH.

An applicant may be certified without examination if the applicant:

- has either practiced reflexology as a licensed massage practitioner for at least five years prior to the bill's effective date or successfully completed approved training prior to the bill's effective date, and applies for certification by one year after the bill's effective date; or
- holds a credential from another state, and the Secretary of Health (Secretary) determines that the state's credentialing standards are substantially equivalent to this state's standard.

Exemptions from the certification requirement are provided for:

- individuals giving reflexology to members of his or her immediate family;
- licensed massage practitioners and other credentialed providers performing services within their scope of practice;
- individuals practicing reflexology at an athletic department of (1) any institution that is maintained with public funds, including educational institutions, (2) a school or college approved by the DOH, or (3) a nonprofit organization holding a specified liquor license;
- students enrolled in an approved reflexology or massage school, program, or apprentice program providing uncompensated, supervised services incidental to the school or program; and
- individuals who have completed an approved somatic education training program.

Reflexologists are subject to the Uniform Disciplinary Act for health professions, and the Secretary is the disciplining authority.

Health carriers are not required to contract with certified reflexologists.

Practice as a Reflexologist.

A person represents himself or herself as a reflexologist when he or she uses a title in a description of services that incorporates specified terms, or their derivations, that imply a reflexology technique or method. A person certified as a reflexologist is prohibited from using a title or description of services, including in advertising, that incorporates terms implying a massage technique or therapy unless he or she is licensed as a massage practitioner.

It is unlawful to advertise the practice of reflexology or any other term that implies reflexology technique or method in any public or private publication or communication by a person not certified as a reflexologist or licensed as a massage practitioner.

A reflexologist's name and certification number must conspicuously appear on all the reflexologist's advertisements, and his or her credential must be displayed in his or her principal place of business.

Inspections of Reflexology or Massage Businesses.

For the purposes of ascertaining violations of the licensure and certification requirements, the Secretary is authorized to inspect, within reasonable limits and in a reasonable manner, the premises of any reflexology or massage business during business hours. If access is denied, the Secretary may apply to any court of competent jurisdiction for a warrant authorizing access to the establishment for these purposes. These provisions do not require advance notice of an inspection.

Other Provisions.

Various technical and clarifying changes are made to the massage licensure statute, including providing for consistent credentialing requirements and deleting obsolete examination provisions.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill makes the following changes:

- Deletes an intent section relating to differentiating reflexology from massage and adds an intent section relating to protecting the public health and safety from the harms of human trafficking.
- Adds that: (a) the bill takes effect July 1, 2013; (b) certified reflexologists, like licensed massage practitioners, must conspicuously display their credential in their place of business; (c) health carriers are not required to contract with certified reflexologists; and (d) the Secretary of Health's inspections of massage or reflexology businesses must be within reasonable limits and in a reasonable manner, and advance notice of the inspection is not required.
- Clarifies that licensed massage practitioners may use "reflexology" as a descriptive term to describe their services, and that the restrictions on the use of terms describing massage practice do not prohibit certified reflexologists from using terms describing reflexology.
- Limits the in-state persons who may be certified without an examination to those who either have five years of experience as a licensed massage practitioner or who, prior to the bill's effective date, have successfully completed reflexology training approved by the Secretary.
- Consolidates duplicate provisions relating to: (a) exemptions from the licensure/certification requirements; and (b) application of the Uniform Disciplinary Act.
- Makes various technical and clarifying changes, such as providing for consistent licensing/certification requirements and consistent use of terms, and deleting obsolete language relating to examinations.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect July 1, 2013, except for section 21, relating to the adoption of rules, which takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is a long history of massage regulation, but now there is a new problem. This bill is part of a package of bills that are initiatives to curb sex trafficking. The foot rub business has become a gateway, and it is often called reflexology. In Oregon, advocates working with the agency were able to reduce the problem. It is hoped that bringing the attention to this issue will help close illicit businesses.

Reflexology cannot stand alone as a regulated group because the number of practitioners is currently too small.

Although the sunrise review did not recommend credentialing, much has changed since that report. The industry is more mature and developed, and the appearance of the questionable store fronts suggests fronts for unlicensed massage and prostitution. The goal is to develop broad strategies to combat illicit businesses. There is support for authority to access the business premises for inspections and to authorize warrants. To inform the public about these new credentialing requirements, the DOH will work with associations and any other providers who may work with massage practitioners and reflexologists, and use agency listservs, website materials, and technical assistance.

There are some professions that practice a reflexology method, such as East Asian medicine practitioners. These practitioners will want to work with the agency during rule-making to ensure that this teaching is allowed to continue.

(In support with concerns) Reflexology should remain in the scope of massage practice. Massage practice recognizes 62 modalities, one of which is reflexology. Massage practitioners can specialize in various modalities, including reflexology. A limited practice exemption from licensure for those who are only practicing reflexology opened a loophole to allow illicit practices to flourish. The massage practitioners are working diligently to educate the public about legitimate massage and working with anti-human trafficking. Getting reflexologists certified will help.

Reflexology is often confused with massage, but it is actually more in line with acupuncture, although noninvasive. Reflexology is recognized as its own modality by the National Institutes of Health. National standards require 200 to 300 hours of training, with more for board certification, which should be the certification standard. Techniques used in massage are not reflexology, but there should be respect for the separate scopes of practice as reflexology is not a part of massage. There are still going to be some bumps in the road because of merging reflexology into the massage statute. Perhaps one seat on the Board of Massage should be held by a reflexologist.

(Opposed) None.

Persons Testifying: (In support) Senator Keiser, prime sponsor; Leslie Emerick, Washington East Asian Medicine Association; and Karen Jensen, Department of Health.

(In support with concerns) Melanie Stewart and Marybeth Berney, American Massage Therapy Association Washington Chapter; and Nytia Stephens, Washington Reflexology Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

Majority Report: Do pass as amended by Committee on Health Care & Wellness. Signed by 9 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Schmick, Assistant Ranking Minority Member; Cody, Green, Harris, Kagi, Pettigrew and Walsh.

Minority Report: Do not pass. Signed by 1 member: Representative Overstreet.

Staff: Amy Skei (786-7109).

Summary of Recommendation of Committee On Health & Human Services Appropriations & Oversight Compared to Recommendation of Committee On Health Care & Wellness:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill takes effect July 1, 2013, except for section 21 relating to the adoption rule which takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill would put reflexologists under the massage therapy board and licensure statutes. The fees will cover the costs of the bill. This bill is intended to get after unlicensed massage and foot spas that are fronts for human trafficking. This will allow the Department of Health to do inspections of massage and reflexology businesses and will help curtail illegal activities. Reflexology is considered a separate modality within the scope of massage therapy.

(Opposed) None.

Persons Testifying: Melanie Stewart, American Massage Therapy Association, Washington Chapter.

Persons Signed In To Testify But Not Testifying: None.